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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,234	12/03/2003	David Alan Binder	C6665(C)	4899

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/727,234

Applicant(s)

BINDER ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12-3-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The examiner construes the phrase "substantially free of precipitation" recited in instant claim 11 to mean that the composition contains less than 10% of insoluble matter, as recited on page 6, lines 5-7 of the instant specification.

### ***Claim Objections***

2. Applicant is advised that should claim 3 be found allowable, claim 20 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. The phrases "at least about", "greater than about", and "less than about" recited in instant claims 1, 2, 5, 8, 10, 13, 15 and 18 render the claims vague and indefinite. The phrases "at least about", "greater than about", and "less than about" render the claims indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrases "at least about", "greater than about", and "less than about". It is unclear what values are encompassed by the phrases "at least about", "greater than about", and "less than about". The examiner suggests that the phrases should be changed to "at least", "greater than" and "less than". "Claims reciting "at least about", "greater than about", and "less than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

6. Instant claims 3-4, 6-7, 9, 11-12, 14, 16-17 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kischkel et al, US 2002/0151454.

Kischkel et al, US 2002/0151454, discloses a composition for washing laundry comprising 5% by weight of sodium dodecylbenzene sulfonate, 5% by weight of guar hydroxypropyl trimethylammonium chloride, 5% by weight of Sokalan CP5 (i.e. an acrylate/maleate copolymer), 0.5% by weight of polyvinylpyrrolidone, and adjunct ingredients (see Table 1 and Examples 1-12), per the requirements of the instant invention. The examiner asserts that the laundry compositions of Kischkel et al would

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inherently meet the Softening Parameter, cationic polymer molecular weight, and delta E requirements of the instant invention, since the compositions disclosed in Examples 1-12 of Kischkel et al contain all of the required components needed to achieve these required limitations, absent a showing otherwise. Therefore, instant claims 1-20 are anticipated by Kischkel et al, US 2002/0151454.

9. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kischkel et al, U.S. Patent No. 6,616,705.

Kischkel et al, U.S. Patent No. 6,616,705, discloses a composition for washing laundry comprising 5% by weight of sodium dodecylbenzene sulfonate, 5% by weight of guar hydroxypropyl trimethylammonium chloride, 5% by weight of Sokalan CP5 (i.e. an acrylate/maleate copolymer), 0.5% by weight of polyvinylpyrrolidone, and adjunct ingredients (see Table 1 and Examples 1-12), per the requirements of the instant invention. The examiner asserts that the laundry compositions of Kischkel et al would inherently meet the Softening Parameter, cationic polymer molecular weight, and delta E requirements of the instant invention, since the compositions disclosed in Examples 1-12 of Kischkel et al contain all of the required components needed to achieve these required limitations, absent a showing otherwise. Therefore, instant claims 1-20 are anticipated by Kischkel et al, U.S. Patent No. 6,616,705.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Bm

Brian Mruk  
April 7, 2005

*Brian P. Mruk*  
Brian P. Mruk  
Primary Examiner  
Tech Center 1700